

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 06/06/05 Item #

File Number  
CP04-097

Application Type  
Conditional Use Permit

Council District  
9

Planning Area  
Willow Glen

Assessor's Parcel Number(s)  
414-15-074

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Sanhita Mallick

Location: Southwest corner of Willester Avenue and Union Avenue

Gross Acreage: 5.16 ac

Net Acreage: 5.16ac

Net Density: n/a

Existing Zoning: R-1-8 Residence

Existing Use: Religious Assembly and associated use (San Jose Presbytery)

Proposed Zoning: No Change

Proposed Use: Cellular antennas in proposed bell tower, associated equipment and a 60 kw back-up generator

### GENERAL PLAN

Completed by: SM

Land Use/Transportation Diagram Designation  
Public-Quasi Public

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: SM

North: Office, Single Family and Two family Residences

CP-Commercial Pedestrian, R-1-8 and R-2 Residence

East: Single-family Residences / Pine Hill School

R-1-8 Residence

South: Office

R-1-8 Residence

West: Single Family and Two family Residences

R-2 Residence

### ENVIRONMENTAL STATUS

Completed by: SM

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: SM

Annexation Title: Union No. 3

Date: March 31, 1955

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval  
☐ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANT

Ridge Communications  
Attn: Karen McPherson  
12667 Alcosta Boulevard, Suite 175  
San Ramon, CA 94583

### OWNER

Presbytery of San Jose  
888 North First Street Suite D  
San Jose, CA 95112

### DEVELOPER

Verizon Wireless

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: MM

Department of Public Works

See attached memorandum.

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Other Departments and Agencies

City of San Jose Fire Department

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GENERAL CORRESPONDENCE

None received

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ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Verizon Wireless, is requesting a Conditional Use Permit to allow the installation of up to six wireless communication antennas within a new 35-foot tall tower, associated mechanical equipment and a 60 Kw back-up generator within a 800 square foot fenced area. The proposed tower is designed to look like a bell tower for the church, however, no bell or other sound producing device will be installed within the tower. The Zoning Ordinance requires a Conditional Use Permit for installation of wireless communication antennas in the R-1-8 Residence District.

The antenna facility is proposed to be located on the premises of Presbytery of San Jose at the southwest corner of Willester and Union Avenue (3151 Union Avenue). The site is bounded by office, single-family and two-family residences to the north across Willester Avenue, single-family residences and a school to the east across Union Avenue, office to the south, and single-family residences to the west. The proposed wireless communications antenna would be located approximately 210 feet away from the closest residential structure.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pacemakers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

**Project Description**

The project proposes six (6) panel wireless communication antennae within a 35-foot tall tower designed to look like a bell tower located at the eastern end of the main sanctuary building. The tower is a separate structure from the existing church building and will be located on a vacant portion of the site currently covered by vegetation and groundcover within the front lawn of the church, north of the parking lot. The tower is located approximately 122 feet away from the property line on Union Avenue and approximately

120 feet away from the property line on Willester Avenue. Photographic simulations have been provided to illustrate the appearance of the building before and after installation of the proposed tower and antennae (see attached photographs).

All equipment, including the proposed back-up generator, will be located within a proposed 800 square-foot area located along the westerly property line of the church site. The equipment will be located within a solid enclosure in order to screen all equipment from public view. The generator will be enclosed within a sound attenuation system so as to meet the noise level at the property line. Further discussion about compliance to noise standards is provided in the “Standby/Backup Generator” section below. The enclosure and the generator will be further screened with a wooden fence built around them, as shown in the attached drawings. The equipment shelter will be located 8 feet away from the westerly property line, and approximately 160 feet away from the front property line on the Union Avenue.

Other minor site improvement includes planting of five Tupelo or Sour Gum or Black Gum (scientific name *Nyssa Sylvatica*) trees. This deciduous tree species was recommended by the City Arborist because a tree with fall color will be very effective in the background of the evergreen redwoods already present on the site. Planting shall be at about 30 feet on center and should be spaced about 7 feet back from the face of the small retaining wall at the property line. This location will allow the trees to develop and eventually shade a portion of the sidewalk.

## **ENVIRONMENTAL REVIEW**

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

The proposed project is consistent with this category in that the project is only for the installation of six wireless antenna within proposed one 35 foot tall “bell tower” and associated mechanical equipment and back-up generator.

## **GENERAL PLAN CONFORMANCE**

The proposed wireless communications antenna use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi Public. The proposed project conforms to this designation in that wireless communication antennae that are in conformance with the development standards stipulated in the City’s Zoning Ordinance and applicable City policy, are allowed on parcels with this designation.

Additionally, City Council Policy 6-20 states that antennae located on residentially-designated properties developed solely with non-residential uses, such as public/quasi public facility such as religious assembly (church), may be acceptable, subject to review in accordance with the City’s Zoning Ordinance. The antennae are installed within a proposed tower that is architecturally integrated with the main sanctuary building and is adequately setback from adjoining uses.

## ANALYSIS

The primary issue analyzed for the proposed project is conformance with the following regulations and policies: 1) the Zoning Ordinance, and 2) City Council Policy 6-20 for Wireless Communication Facilities.

### **Conformance to the Zoning Regulations**

The R-1-8 Single-Family Residence Zoning District has a maximum height of thirty-five feet. The new 35-foot tall tower within which the proposed wireless communication antennae are enclosed is in conformance with the maximum height permitted in the R-1-8 Residence Zoning District. The tower is architecturally integrated with the design scheme of the rest of the buildings on site. The tower will be designed to look like the bell tower for the church.

### **Conformance to City Council Policy 6-20 for Wireless Communications Facilities**

The Council Policy requires new wireless antennas to be located to minimize visual impacts and to be architecturally integrated into the existing structure(s). Additionally, the construction of new architectural elements (i.e., new roof structures or parapets, clock towers, or church steeples) should be considered as a means of providing for and reducing visual impacts of such uses. The Policy also requires ancillary equipment to be screened. Consistent with the Council Policy, the proposed project includes measures that provide visual screening for the proposed antenna. The proposed wireless communications antenna will be located within a new tower which will be designed to match the existing buildings on the project site. The tower will have the appearance of a “bell tower” for the existing church, however, as mentioned earlier, no bell or other sound producing device will be installed within the tower. The equipment shelter and the standby/backup generator would be located at the interior of the property near westerly property line and will be screened by a new 6-foot tall solid fence and landscaping.

As part of its criteria for siting Wireless Communication Antennas, *the Land Use Policy for Wireless Communication Facilities* requires that new wireless communications antenna should be located no closer than 35 feet from any property with a residential use or one foot for every foot in height of the proposed structure. The applicant’s proposal is consistent with the Council Policy in that the proposed wireless communication antenna, enclosed within a new 35-foot tall tower would be located in excess of 210-feet from the adjacent residential uses.

### **Stand-by/ Backup Generator**

The City of San Jose Zoning Ordinance allows stand-by/backup generators that meet the City’s noise standards in the R-1-8 Residence District with the issuance of a discretionary permit. The applicant has provided information to staff that the proposed 60 Kw 96 HP stand-by/backup generator will have an average decibel level of 53.22 at twelve feet from the center of the generator, with the use of a sound attenuation system that encloses the generator completely. This sound level is within the maximum allowed level of 55 decibel at a residential property line. Staff has conditioned the draft permit to require use of the

sound attenuation system, and, also, to place the center of the generator no closer than twelve feet from the closest property line. Additionally, applicant has applied for a Bay Area Air Quality Management District Permit, and already obtained the “authority to construct” permit which establishes that the emissions from the generator are in conformance with the air quality impact criteria set by the City of San Jose.

The proposed generator located within the proposed wireless communications antenna’s fenced enclosure will be screened from public view. Conditions are included as part of this permit to allow operation of the proposed generator only during interruptions of electrical service from the distribution system or transmission grid due to circumstances beyond the operator’s control, with the exception of limited testing hours.

## **RECOMMENDATION**

Staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review requirements.
4. The site is bounded by office, single-family and two-family residences to the north, single-family residences and school to the east, office to the south, and single-family residences to the west.
5. The project proposes to install up to six (6) wireless communications antennas within a proposed tower located at the front lawn at the easterly corner of the main building of Presbytery of San Jose located on 3151 Union Avenue.
6. The ancillary equipment is proposed to be located in an equipment shelter at least 8 feet away from the southerly property line of the site. This placement will not remove required parking.
7. The wireless communications antennae will be located within a proposed bell tower approximately 35 feet in height and meets the maximum height limit of 35 feet in the R-1-8 Residence Zoning District.
8. The wireless communication antennas are proposed to be located a minimum of 210 feet horizontally from adjoining residences.
9. The proposed wireless communication antenna located within a new 35-foot tall bell tower will have an average noise level of 53.22 at twelve feet from the center of the generator, when used in conjunction with a sound attenuation system that encloses the generator completely, which is well within the maximum 55 dBL allowed at the residential property line.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project complies with the applicable criteria of City Council Policy 6-20, Land Use Policy for Wireless Communications Facilities.
4. Findings are hereby made that the subject proposal conforms to the specific criteria contained in Ordinance Number 26456 to establish regulations for Electrical Power Generation, San Jose Municipal Code Sections 20.20, 20.30, 20.40, 20.50, 20.80, 20.100, and 20.200.
5. The proposed project is in compliance with the California Environmental Quality Act.
6. The proposed antenna facility is compatible with the surrounding neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit and Development Exception shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Verizon Wireless, Piedmont and Sierra, Site Number: 1500272184/117391", dated September 10, 2004, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no on-site lighting, except as specified on the approved plan set. All on-site lighting shall conform to the City of San José's Outdoor Lighting Policy. All lights shall utilize low sodium fixtures and permit no uplighting.
5. **Colors and Materials.** All wireless communications antennas colors and materials are to be those specified on the approved plan set.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.

7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.
9. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. **Construction Plans.** This permit file number, CP04-097, shall be printed on all construction plans submitted to the Building Division.
  - b. **Emergency Address Card.** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
12. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
13. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PCS antennas for other providers. The Director of Planning shall review any changes to the approved design necessary to accommodate other providers.
14. **Generator Operation.** This Stand-by or Backup Electrical Power Generation Facility shall be operated only during interruptions of electrical service from the distribution system or transmission grid due to circumstances beyond the operator's control.
15. **Responsibility.** The Applicant shall agree to be responsible for any damage caused by its activities to any existing public or private structures or facilities.
16. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximity caused by and growing out of or resulting from the exercise of the Permit.



17. **Nuisance.** The power generation facility shall be maintained in a manner that does not create a public or private nuisance. For purposes of this Permit, a nuisance shall mean any act or omission that obstructs or causes substantial inconvenience or damage to the public or any member thereof, in the course of, or by the manner of, the exercise of rights created by the granting of the permit.
18. **Standby/Backup Generator Operation.**
- a. **Generator Specifications.** The project shall use a new *John Deere* make, 60 Kw 96 HP standby/backup electrical power generation facility (Model No. 5030HF270) and associated equipment.
  - b. **Disturbance Coordinator.** Applicant shall post on the site the name and phone number for a disturbance coordinator who shall be available to answer questions and respond to complaints from the neighborhood.
  - c. **Emergency Power.** Testing of emergency power equipment shall be limited to two (2) hours per month.
  - d. **Record of Operation.** The generator shall include a non-resettable totalizing counter to record all hours of operation. The applicant shall maintain an accurate record of the operation of the standby/back-up generator to the satisfaction of the Director of Planning of the City of San José and appropriate local, State, and Federal agencies. These records shall cover at least the following items:
    - 1. Hours of operation for testing and maintenance.
    - 2. Dates and hours of operation for discretionary use in the event of a power failure.
    - 3. Operational problems, complaints, and difficulties.
    - 4. A log of Special Occurrences to include the following: fires, earthquakes, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted in the class of the site involved, citizen complaints received, flooding, unscheduled shutdowns, and other unusual occurrences.
    - 5. Dust and litter control efforts and results.
    - 6. Description of materials received, identified by source and material.
- The records shall be open to inspection by the City of San José and other duly authorized regulatory and enforcement agencies during normal business hours.
19. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in a manner as to cause a nuisance, as defined above.
20. **Facility Maintenance.** The applicant shall maintain the power generation facility in a safe and

clean manner.

21. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San Jose Municipal Code requires that all land development approvals and applications for such approvals in the City of San Jose shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San Jose-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San Jose-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
22. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
23. **Maximum Noise Levels.** The stand-by or backup electrical generator should be installed and used in conjunction with appropriate sound attenuation measure, so that the maximum noise level of the generator at the closest site property line contiguous to a property not controlled by the applicant shall not exceed the applicable noise standard of 55 decibels for residentially zoned properties, 60 decibels for commercially zoned properties, and 70 decibels for industrially zoned properties, as set forth in the Zoning Ordinance.
24. **Location of Generator.** The center of the stand-by or backup electrical generator should be located at least 12 feet away from the closest property line.
25. **Bay Area Air Quality Management District Permit.** Applicant must operate the backup/standby generator in compliance with a Bay Area Air Quality Management District (BAAQMD) permit.
26. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
27. **Air Quality.** The temporary generators will be required to make use of the best available technology to reduce air quality impacts.
28. **Use of tower.** No mechanical or electronic sound-generating device shall be installed within the proposed tower.
29. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
30. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Chapter 20.100.190 of Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.